LE COPY

FILED

[redacted]

[redacted]

No. 701.

SMITH & WESSON, Inc. (a corporation),

Petitioner,

vs.

HAROLD L. CRAIN,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

MORRIS B. CRAIN,
MELVIN M. YOUNGER,
231 [redacted] Building,
Bakersfield, California,
Counsel for Respondent.

VINCENT P. DI GIORGIO
DI GIORGIO & DAVIS,
1021 [redacted] Avenue,
Bakersfield, California,
Of Counsel.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-8271.

SUBJECT INDEX

	PAGE
Statement of the case	1
The law applicable to this case	3
Reasons relied upon for denial of writ	8
A. Smith & Wesson, Inc., is "doing business" in the State of California	8
B. Proper service upon Smith & Wesson, Inc., was effected by service upon Walter K. Lookabaugh	13
Conclusion	17

TABLE OF AUTHORITIES CITED

CASES

	PAGE
Erlinger Mills v. Cohoes Fibre Mills, 239 F. 2d 502	12, 13
Hanson v. Denckla, 357 U. S. 235, 78 S. Ct. 1228, 2 L. Ed. 1283	3, 5, 7, 11, 12
International Shoe Co. v. Washington, 326 U. S. 310, 66 S. Ct. 154, 90 L. Ed. 95	3, 5, 7, 11, 12, 14
Kilpatrick v. Texas & P. Ry. Co., 166 F. 2d 788	12
L. D. Reeder Contractors of Arizona v. Higgins Industries, Inc., 265 F. 2d 768	6
McGee v. International Life Insurance Co., 355 U. S. 220, 78 S. Ct. 199, 2 L. Ed. 223	3, 4, 5, 7, 11
Mueller v. Steelcase, Inc., 172 Fed. Supp. 416	12, 13
Pennoyer v. Neff, 95 U. S. 714, 24 L. Ed. 565	3
Roehl v. Texas Company, 107 Cal. App. 691, 291 Pac. 255	14

STATUTE

California Corporations Code, Sec. 6500	13, 15

TEXTBOOK

47 Georgetown Law Journal (1958), p. 342	6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 701

SMITH & WESSON, INC. (a corporation),

Petitioner,

vs.

HAROLD L. COSPER,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement of the Case.

Respondent filed an action in the Superior Court of the State of California, County of Kern, for negligence and breach of warranty against Smith & Wesson, Inc., and F. Morton Pitt on December 21, 1956. [Clk. Tr. p. 2.] The Complaint alleged the sale to respondent in July, 1955, of a "Combat Masterpiece Revolver" by F. Morton Pitt, a retailer, and further alleged that the revolver was negligently manufactured by Smith & Wesson, Inc. While respondent, a police officer, was target practicing on January 4, 1956, the complaint states, the revolver exploded causing serious injury to his right eye with a resulting permanent loss of vision. The complaint and summons were served upon F. Morton Pitt and upon "Walter K. Lookabaugh, as agent of the Smith & Wesson Arms Co., Salesmanager of the Smith & Wesson Arms Co., for the eleven western states, including California, and Manu-

facturer's Representative for Smith & Wesson Arms Co., in California."

Defendant F. Morton Pitt answered and denied breach of warranty or negligence, and alleged contributory negligence by respondent. [Clk. Tr. p. 8.] Petitioner Smith & Wesson, Inc., appearing specially, then filed a notice of motion to quash the service of summons on the ground that it was a Massachusetts' Corporation not "doing business" in the State of California and maintained no agent here upon whom process might be served. [Clk. Tr. p. 15.]

The matter was heard upon the oral arguments of counsel, the affidavits of counsel for respondent [Clk. Tr. p. 22] and of Lynn A. White, Deputy Chief and Commander of the Personnel & Training Bureau of the Los Angeles Police Department [Clk. Tr. p. 31] and the depositions of Hannah A. Giegerich, Office Manager for Walter K. Lookabaugh, and Harold Owen Austin and Frank Willis Symonds, the Sales Manager and the Assistant Treasurer of Smith & Wesson, Inc. The single affidavit filed in support of this motion to quash was that of Carl R. Hellstrom, the President of Smith & Wesson, Inc. [Clk. Tr. p. 18.]

Unfortunately, the deposition of Walter K. Lookabaugh was not on file with the Superior Court because of the refusal of the deponent to sign or return it and could not be considered by that Court. However, pursuant to an order of the Los Angeles Superior Court made on June 2, 1958, Lookabaugh subscribed and returned his deposition and this important evidence was received and considered by the California Supreme Court (Opinion of Supreme Court of the State of California, Pet. App. p. 4a *et seq.*)

The Superior Court granted the motion to quash service of summons [Clk. Tr. p. 59] and respondent ap-

pealed from that order. The District Court, still without the benefit of the Lookabaugh deposition, affirmed the order of the lower court. (Opinion of the District Court of Appeal of the State of California, Pet. App. p. 8a *et seq.*)

The Supreme Court of the State of California, relying heavily upon and referring often to the theretofore unconsidered deposition of Lookabaugh, reversed the order granting the motion to quash and found that Smith & Wesson was "doing business" in the state under the minimum contacts test established in *International Shoe Co. v. Washington*, 326 U. S. 310, 66 S. Ct. 154, 90 L. Ed. 95, and further defined in *McGee v. International Life Insurance Co.*, 355 U. S. 220, 78 S. Ct. 199, 2 L. Ed. 223, and that proper service upon Smith & Wesson was effected by the service made upon Walter K. Lookabaugh, "the general manager in this State" for purposes of service of process.

The Law Applicable to This Case.

The legal boundaries in the field of judicial jurisdiction over foreign corporations which were established by *Pennoyer v. Neff*, 95 U. S. 714, 24 L. Ed. 565, in 1878, have been greatly expanded by more recent decisions of this Court. The current law is contained primarily in *International Shoe Co. v. State of Washington*, 326 U. S. 310, 66 S. Ct. 154, 90 L. Ed. 95, and in the two most recent but less comprehensive decisions in *McGee v. International Life Insurance Co.*, 355 U. S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223, and *Hanson v. Denckla*, 357 U. S. 235, 78 S. Ct. 1228, 2 L. Ed. 1283.

The *International Shoe Co.* case, decided in 1945, involved an attempt by the State of Washington to en-

force an assessment of contributions to its state unemployment fund. Thirteen salesman of a Delaware corporation, having authority only to solicit orders, traveled within the State of Washington. This was held on the appeal, by Mr. Chief Justice Stone, to satisfy the fundamental test of judicial jurisdiction, *i.e.* that there be "certain minimum contacts" with the state of the forum in order that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" These contacts were sufficient to "make it reasonable . . . to require the corporation to defend the particular suit which (was) brought there."

In *McGee v. International Life Insurance Co., supra*, decided in 1957, Mr. Justice Black noted that there existed a steady trend

> ". . . toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more states and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportations and communication have made it much less burdensome for a party sued to defend himself in a state where he engages in economic activity."

In the *McGee* case, an insured, domiciled in California, had purchased a life insurance policy from a company incorporated in Arizona which solicited business in California by mail but maintained no office or sales personnel in California. Thereafter, the defendant, a Texas cor-

poration, assumed the insurance obligations of the Arizona corporation and mailed from Texas an offer to continue the insurance in accordance with the terms of the original policy. The insured accepted the offer by mail and mailed premiums to Texas. When the insured died and the company refused to pay his beneficiary, she sued and recovered under a California statute which permits its residents to sue non-resident insurance companies in California on policies solicited by mail from outside the State or for which premiums are collected by mail, provided the insured is physically within the state.

On appeal from the refusal of the Texas courts to enforce the California judgment thus obtained, Mr. Justice Black held that it was "sufficient for purposes of due process that the suit was based on a contract which had a substantial connection with that State" where the suit was brought. This substantial connection was that (1) the contract had been delivered in California; (2) the premiums had been mailed from California and (3) the insured was domiciled in California when he died.

Taken together, the *International Shoe Co.* case and the *McGee* case indicate that the acts relied upon as the connection with the state, must also be connected with the cause of action sued upon. That is, sufficient minimum contacts exist where there are substantial transactions by or on behalf of the foreign corporation within the forum and where the cause of action is connected with those transactions.

The rules established by these two landmark cases must likewise be considered in the light of the 1958 decision in *Hanson v. Denckla, supra.* There the Florida probate court attempted to exercise personal jurisdiction over a Delaware trustee by means of constructive service by pub-

lication, authorized by Florida statute. The trust had been created in Delaware of a corpus located there by a resident of that state who had later become domiciled in Florida. This Court held that the mere domicile of the settlor in Florida, together with the receipt by him of income there, were not sufficiently substantial contracts to make the Delaware trustee amenable to suit in Florida.

> "The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."

Justices Black, Burton, Brennan and Douglas dissented from this decision on other grounds.

A comprehensive review and analysis of the current state of the law in this field was presented by the Hon. Stanley N. Barnes in *I. D. Reeder Contractors of Arizona v. Higgins Industries, Inc.*, 265 F. 2d 768, decided by the Ninth Circuit on March 10, 1959. After carefully summarizing the decisions in the three cases reviewed above, Judge Barnes adopts the reasoning contained in a current article appearing in 47 Georgetown L. J. 342 (1958), as follows (at p. 773):

> "There are three rules which can be drawn from a combined reading of International Shoe, McGee and Hanson against which all future litigation of a like nature may be tested. * * * The rules are:
>
> (1) The nonresident defendant must do some act or consummate some transaction within the forum. It is not necessary that defendant's agent be physically within the forum, for this act or transaction,

may be by mail only. A single event will suffice if its effects within the state are substantial enough to qualify under Rule Three.

(2) The cause of action must be one which arises out of, or results from, the activities of the defendant within the forum. It is conceivable that the actual cause of action might come to fruition in another state, but because of the activities of defendant in the forum state there would still be a 'substantial minimum contact.'

(3) Having established by Rules One and Two a minimum contact between the defendant and the state, the assumption of jurisdiction based upon such contact must be consonant with the due process tenets of 'fair play' and 'substantial justice.' If this test is fulfilled, there exists a 'substantial minimum contact' between the forum and the defendant. The reasonableness of subjecting the defendant to jurisdiction under this rule is frequently tested by standards analogous to those of forum non conveniens." (Pp. 351-352.)

Paraphrasing the wording of the decisions in the *International Shoe*, *McGee* and *Hanson* cases, Judge Barnes restated the test as follows (at p. 773):

"Thus there is established as essential some act by which the defendant 'purposefully' seeks the privilege of conducting activities within the forum state and obtaining the benefit and protection of its laws. This essential act of the defendant must give rise to or result in a cause of action within that forum state. Having once established such substantial minimum contact, it must appear that the assumption of jurisdiction based thereon is in accordance with due process concepts of 'fair play' and 'substantial justice.'"

Reasons Relied Upon for Denial of Writ.

A. Smith & Wesson Inc., Is "Doing Business" in the State of California.

The record before the California Supreme Court establishes the following facts:

1. Walter K. Lookabaugh is the exclusive sales representative of Smith & Wesson in the State of California. [Lookabaugh Dep. p. 19, lines 1-5; p. 28, lines 5-9 p. 57, lines 7-23; p. 29, lines 7-22; Austin Dep p. 30, lines 20-24.]

2. Lookabaugh is paid a commission of 5 per cent by Smith & Wesson on each gun that is sold in his district. [Austin Dep. p. 26, lines 11-12.]

3. Lookabaugh sells Smith & Wesson products at prices established by Smith & Wesson. [Austin Dep. p. 17, lines 11-20; Giegerich Dep. Ex. 13.]

4. Lookabaugh sells Smith & Wesson products to at least 13 wholesale houses within the State of California, and the orders are written up in an order book and forwarded to Smith & Wesson which ships the merchandise directly to the place of business of the purchaser. [Lookabaugh Dep. p. 19, line 19, to p. 23, line 5; Austin Dep. p. 4, lines 2-9; Giegerich Dep. Ex. 37.]

5. Lookabaugh arranges publicity for Smith & Wesson products, gives demonstrations of Smith & Wesson products, and displays and distributes Smith & Wesson advertising brochures and catalogues. [Lookabaugh Dep. p. 28, line 10, to p. 29, line 23; Giegerich Dep. Exs. 4, 8, 14, 15X, 20, 37, 49.]

6. Lookabaugh has received complaints regarding Smith & Wesson products from purchasers, has received correspondence from Smith & Wesson directing his at-

tention to such complaints, and has investigated, adjusted and reported to Smith & Wesson regarding such complaints. [Lookabaugh Dep. p. 30, lines 4-25; p. 31, line 3, to p. 32, line 4; Giegerich Dep. Exs. 6, 7, 12, 19, 22, 24, 25, 44, 48.]

7. Walter K. Lookabaugh has met and discussed the terms of the oral agreement between Lookabaugh Co. and Smith & Wesson with officers of Smith & Wesson in the State of California and at the Smith & Wesson factory in Massachusetts. [Lookabaugh Dep. p. 32, lines 5-25; p. 43, lines 1-15; p. 44, line 24, to p. 45, line 13.]

8. In response to a letter of complaint directed to Smith & Wesson by Lynn A. White, Deputy Chief of Police of the Los Angeles Police Department, Chief White was informed that Walter K. Lookabaugh would call upon him regarding the complaint and, within a few days, Walter K. Lookabaugh did call and state that he was a representative of Smith & Wesson and had come to discuss the complaints made in the letter sent to Smith & Wesson. [Clk. Tr. pp. 31-32; Lookabaugh Dep. p. 35, line 8, to p. 36, line 22; Austin Dep. p. 10, lines 18-22; p. 13, line 13, to p. 14, line 10; p. 15, lines 6-15.]

9. Walter K. Lookabaugh presented a business card to Chief White and to other customers upon which appeared the letters "SW," the Smith & Wesson registered trademark, and, thereunder "SMITH & WESSON, SPRINGFIELD, MASSACHUSETTS" and, in the lower left corner, "REPRESENTED BY WALTER LOOKABAUGH, TILDEN SALES BUILDING, SAN FRANCISCO," and, underneath that written in ink, "Kelly Lookabaugh," and, in the right corner, "Los Angeles Office, 1077 Point View Street." [Lookabaugh Dep. p. 38, line 13, to p. 40, line 17.]

10. Lookabaugh Co. corresponds with Smith & Wesson at least weekly and sometimes several times a week [Austin Dep. p. 22, lines 4-13.]

11. Lookabaugh investigates prospective dealers and communicates its findings and recommendations to Smith & Wesson and Smith & Wesson has acted in reliance upon such findings and recommendations. [Austin Dep. p. 48, line 15, to p. 22, line 3.]

After reviewing the record in this case, the Supreme Court of the State of California concluded as follows:

> "From the record it indisputably appears that Smith & Wesson had a continuing arrangement for the distribution and sale of its products throughout this state. Said defendant had retained a manufacturer's representative, Lookabaugh, for the promotion of sales for the servicing of dealer accounts, and for the distribution of advertising material which defendant furnished in furtherance of its selling activity. Such a regular course of business dealings in sales promotion within the state is similar to the regular purchasing activities of the foreign corporation in the Jahn case and the regular selling activities of the foreign corporation in the Borgward case. Though self-employed as a manufacturer's representative, Lookabaugh was performing much the same type of substantial selling services for Smith & Wesson through a course of regularly established and systematic business activity as were deemed in Gray v. Montgomery Ward, Inc. 155 Cal. App. 2d 55, to constitute 'doing business' in the state by the foreign corporation there involved. These services may reasonably be said to have given Smith & Wesson 'in a practical sense, and to a substantial degree, the benefits and advantages it would have enjoyed by operat-

ing through its own office or paid sales force.' (Sales Affiliates, Inc. v. Superior Court, 96 Cal. App. 2d 134, 136.) Certainly, the admitted activities of Smith & Wesson in this state are more significant than the minimal contacts deemed sufficient in McGee v. International Life Insurance Company, 355 U. S. 220, where the foreign corporation elected to deal with its insured, a California resident, only by mail." (Pet. App. p. 5a.)

Applying the test derived from an analysis of the *International Shoe*, *McGee* and *Hanson* cases, it seems beyond question that Smith & Wesson has, through its combination commission salesman—advertising man—trouble shooter Lookabaugh, and through its extensive mail order business, "purposefully" sought the privilege of conducting activities within California and obtaining the benefit and protection of its laws. Secondly, the cause of action which is the subject of this suit arose directly out of the explosion of a gun sold through the "continuing arrangement for the distribution and sale of its products in California" developed and maintained by Smith & Wesson. In fact the record indicates that Lookabaugh was assigned by Smith & Wesson to the task of investigating this very incident and made reports to Smith & Wesson concerning it. [Giegerich Dep. Exs. 22, 24 and 25.]

Thirdly, it is necessary to weigh and consider the inconvenience to plaintiff of a refusal to entertain the action, the benefits which defendant has derived from its activities within California, and the other basic equities of this particular factual situation. Judge Learned Hand, who first enunciated this "estimate of inconveniences" test, expressly approved by this Court in the *International*

Shoe Co. case (at p. 317), later stated that it was "indistinguishable from the issue of 'forum non conveniens.'"

Kilpatrick v. Texas & P. Ry. Co., 166 F. 2d 788, 791 (1948).

In this regard, the California Supreme Court stated as follows:

> "It further appears that the gun which exploded was sold in this state, the accident occurred in this state, the plaintiff is a resident of this state, and many of the witnesses who will probably be called at the trial are present in this state. Therefore, in view of all the facts, we deem it not inconsistent with 'traditional notions of fair play and substantial justice' to subject the defendant Smith & Wesson to the jurisdiction of the courts of this state in this action." (Pet. App. p. 5a.)

At this point, several observations regarding defendant's Petition for Writ of Certiorari appear inescapable: (1) It wholly omits mention of the substantial contracts appearing in the record. (2) It mis-states the decision of the California Supreme Court by claiming that it eliminates the necessity for the existence of "substantial contacts." (3) It incorrectly equates the facts of this case with those of *Hanson v. Denckla, supra, Erlinger Mills v. Cohoes Fibre Mills*, 239 F. 2d 502, and *Mueller v. Steelcase, Inc.*, 172 Fed. Supp. 416.

As has been pointed out, in the *Hanson* case the only contacts were income payments and other correspondence by mail from the foreign trustee to the resident settlor. The Court stated:

> "The cause of action in this case is not one that arises out of an act done or transaction consum-

> mated in the forum state. In that respect, it differs from *McGee v. International Life Insurance Co.* . . . and the cases there cited . . . . (T)he record discloses no instance in which the trustee performed any acts in Florida that bear the same relationship to the agreement as the solicitation in McGee."

In the *Erlinger* case, decided before McGee, the only contacts consisted of a single F. O. B. shipment of goods into the forum and a visit by the foreign corporation's manager in an attempt to arrange a settlement of the controversy. In the *Mueller* case, a non-resident salesman sold furniture F. O. B. to retailers in the forum, but, unlike the case at bar, did not maintain an office in the forum, did no adjusting of complaints or "trouble shooting," carried no advertising matter, arranged no publicity and investigated and reported on no dealers or prospective dealers for the foreign corporation. Moreover, the state statute struck down in that case was so broad as to eliminate the necessity for the existence of "substantial contacts." In short, the cases cited by petitioner are easily distinguishable from the case at bar.

B. Proper Service Upon Smith & Wesson, Inc., Was Effected by Service Upon Walter K. Lookabaugh.

The record indicates that the complaint and summons in this case were served upon "Walter K. Lookabaugh, as agent of the Smith & Wesson Arms Co., Salesmanager of the Smith & Wesson Arms Co. for the eleven western states, including California, and Manufacturer's Representative for Smith & Wesson Arms Co. in California."

Section 6500 of the California Corporations Code specifies that service upon a foreign corporation may be made by serving its "general manager in the State." However,

a long line of California cases, beginning with *Roehl v. Texas Company*, 107 Cal. App. 691, 291 Pac. 255, decided in 1930, has declared that once the existance of substantial contacts has been established, the real test of the validity of the service made is whether the agent served is of sufficient character, rank and dignity to make it reasonably certain that the defendant will be apprised of the service. (See, Opinion of the Supreme Court, Pet. App. p. 6a.)

The stand taken by the California courts is fully in accord with the rule announced by this Court in the *International Shoe Co.* case. There, service upon a salesman whose activities on behalf of the foreign corporation were far more restricted in scope than those of Lookabaugh, was held sufficient. Mr. Chief Justice Stone stated the position of the Court as follows (at p. 320):

> "We are likewise unable to conclude that the service of the process within the state upon an agent whose activities establish appellant's 'presence' there was not sufficient notice of the suit, or that the suit was so unrelated to those activities as to make the agent an inappropriate vehicle for communicating the notice. *It is enough that appellant has established such contacts with the state that the particular form of substituted service adopted there gives reasonable assurance that the notice will be actual.* (Citing cases.) (Emphasis added.)

After reviewing "plaintiff's extended showing of Smith & Wesson's activities in this state through its agreement with Lookabaugh for servicing dealer accounts, investigating and recommending prospective dealers to Smith & Wesson, arranging publicity, distributing advertising, and

handling and reporting on complaints concerning defects in Smith & Wesson products" (Opinion of the Supreme Court, Pet. App. p. 3a), the California Supreme Court concluded as follows (at p. 6a):

> "Here, it reasonably appears that Lookabaugh, as a manufacturer's representative actively engaged in promoting the sales of Smith & Wesson and earning commission through such sales, would have ample regular contact with Smith & Wesson and would be of 'sufficient character and rank to make it reasonably certain' that Smith & Wesson would be apprised of the service of process. Neither the fact that Lookabaugh's organization was designated as 'manufacturer's representatives' nor the fact that such representatives promoted sales 'on their own time and expense' is determinative here. Whether Smith & Wesson was operating 'through an independent contract, agent, employee or in any other manner,' the essential factor is that Lookabaugh in his selling and advertising activities was performing services for Smith & Wesson and providing it with the opportunity for 'regular contact with its customers and a channel for the continuous flow of business into the State.' (citing cases). In short, the arrangement of Smith & Wesson with Lookabaugh appears, in the light of the president's affidavit, to have given Smith & Wesson substantially the business advantages that it would have enjoyed 'if it conducted its business through its own offices or paid agents in the state' (citing cases), and such arrangement was sufficient to constitute Lookabaugh 'the general manager in this State' for purposes of service of process on Smith & Wesson." (Corp. Code, Sec. 6500.)

Again, the Petition filed by defendant grossly misstates the facts. The Petition claims (at p. 16):

> "It is also established that Walter K. Lookabaugh is not an agent, servant or employee of any kind or nature of Smith & Wesson, Inc., and the most that can be said of him is that he is an agent or employee of Walter K. Lookabaugh Company, a corporation. . . ."

In the first place, the Walter K. Lookabaugh Co. is not a corporation, and, secondly, Walter K. Lookabaugh *is* the Walter K. Lookabaugh Co. These matters are covered by the following excerpts from the Lookbaugh deposition:

> "Q. By Mr. Chain: Mr. Lookabaugh, are you doing business at the present time under the firm style and trade name of Walter K. Lookabaugh. A. Yes, sir." (P. 17, lines 12-15) . . .
>
> "Q. And Mr. Lookabaugh, ever since November, 1955, you have been in your own name operating that business which was formerly operated by your father, isn't that right; you are the only owner of that, are you not? A. Yes, sir." (P. 19, lines 6-10) . . .
>
> "Q. And the Walter K. Lookabaugh Company is you? A. Yes, sir." (P. 23, lines 13-14.)

Additionally, the discussion in the Petition of the dangers of serving office boys or janitors (Pet. p. 16) is not pertinent. Service in this case was made upon the exclusive sales representative and "trouble shooter" of Smith & Wesson in the eleven western states. The Opinion of the California Supreme Court details the extensive activities of Lookabaugh in Smith & Wesson's behalf and

the regular correspondence between them. Certainly, Lookabaugh would forward, and he obviously has forwarded, copies of any process delivered to him.

Conclusion.

For the reasons set forth above, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

MORRIS B. CHAIN,

MILTON M. YOUNGER,

Counsel for Respondent.

DI GIORGIO & DAVIS,

Of Counsel.